

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL L. FRANKLIN, JR.,

Plaintiff,

vs.

DEPARTMENT OF HEALTH & HUMAN
SERVICES,

Defendant.

8:21CV87

ORDER

The plaintiff, who is self-represented, has filed a motion to amend his complaint (Filing No. 7) and a “motion to proceed with summons.” (Filing No. 9). Upon review of the docket, Plaintiff is entitled to amend his complaint as a matter of right. See Fed.R.Civ.P 15(a). Moreover, the court issued summons for service on the defendant on May 24, 2021. (Filing No. 10).

The court notes, however, that some of the documents indicate Plaintiff is filing this lawsuit in his capacity as CEO of Almost Family Personal Care, LLC. If so, Plaintiff cannot pursue this lawsuit without an attorney. A limited liability corporation cannot litigate its action in this forum without representation by licensed counsel. Knoefler v. United Bank of Bismarck, 20 F.3d 347, 347-48 (8th Cir. 1994).

Plaintiff’s complaint alleges this court has diversity jurisdiction over his case.¹ Based on the allegations in the complaint, Plaintiff is a Nebraska citizen. Defendant is a state agency and is therefore not considered a citizen of any state

¹ The initial complaint alleges more than \$15,000 is at issue, which is less than the jurisdictional limit. However, the motion to amend, filing no. 7, modifies the demand to \$1 Billion.

for the purposes of diversity jurisdiction. Jakoubek v. Fortis Benefits Ins. Co., 301 F.Supp.2d 1045, 1048 (2003). The court therefore lacks diversity jurisdiction.

Liberally construed, Plaintiff's pro se complaint could allude to a federal claim. But while it mentions a claim for "discrimination" based on race, it provides no reference to the legal basis for this claim and includes very few facts explaining it. So, as it stands at this time, it is unclear whether this court has federal question jurisdiction.

Finally, based on the caption of the complaint, Plaintiff may have intended to file this lawsuit in District Court of Douglas County, Nebraska, a state court of general jurisdiction, and not in the United States District Court for the District of Nebraska, a federal court with jurisdiction as limited by Congress.

Accordingly,

IT IS ORDERED:

- 1) Plaintiff's motion for leave, (Filing No. 7), is granted and Plaintiff's operative complaint consists of Filings 1, 6, 7, and 8 combined.
- 2) Plaintiff's motion for leave to proceed with service on the defendant, (Filing No. 9), is granted. Plaintiff may serve summons on the defendant, such summons to be served with a copy of Filings 1, 6, 7, and 8.
- 3) On or before June 25, 2021, Plaintiff shall file a brief clarifying a) whether Michael L. Franklin, Jr. is filing this lawsuit in his personal capacity or in his capacity as CEO for Almost Family Personal Care, LLC; b) whether Plaintiff intended to file his lawsuit in the federal court (rather than in the District Court of

Douglas County, Nebraska) and, c) if Plaintiff did intend to file this case in federal court, the basis for federal subject matter jurisdiction over the case. The failure to timely do so may result in dismissal for lack of counsel, lack of jurisdiction, and/or want of prosecution without further notice.

4) The clerk shall set an internal case management deadline of June 25, 2021.

Dated this 25th day of May, 2021.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge